

**STATEMENT OF G. EDWARD EVANS
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Before the

**SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE**

on

WIRELESS INNOVATION AND CONSUMER PROTECTION

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you this morning to discuss wireless innovation and consumer protection. My name is Ed Evans and I am the founder and CEO of Stelera Wireless, a start-up company now constructing broadband wireless markets in 42 primarily rural areas of the country, using spectrum we won in last year's advanced wireless services auction. I am also a member of the Board of Directors of CTIA-The Wireless Association®.

The emergence of Stelera Wireless provides fresh evidence that the current light-touch regulatory environment, where business models are set by entrepreneurs rather than the government, is the best means of fostering innovation and competition in the wireless industry. The choices made possible by this innovation and competition protect consumers far more effectively than any regulations could. I would respectfully suggest that you avoid calls to impose particular business models on the wireless industry and that you extend the well-established benefits of the national wireless framework to encompass all the terms and conditions of wireless service, and not just rates and entry.

Let me address each of these issues in turn.

Since you may not be familiar with Stelera Wireless, allow me to provide a little background. Stelera is a start-up company formed in 2006 to participate in the FCC's advanced wireless services (AWS) auction. As you know, that auction concluded last September, with winning bidders paying almost \$14 billion for the rights to the AWS spectrum. I am pleased to say that Stelera succeeded in winning 42 licenses, mostly in rural markets. Having spent millions to acquire these licenses, we are currently investing additional capital to build out our network.

The towns in our markets range in size from Sunnyslope, Washington (population 2,521) to Lubbock, Texas (population 199,000). Three-fourths of the towns in our footprint have a population of less than 10,000. In some of those towns, Stelera will be the first company to offer broadband service because technology, terrain, or lack of density has made it infeasible to provide wireline broadband access.

Stelera's business plan is to use this spectrum to provide competitively priced broadband wireless services in our markets, both on a month-to-month basis and under longer term contracts. We will be using third generation (3G) wireless technology called High-Speed Uplink Packet Access (HSUPA), which provides transmission speeds of up to 6 megabits per second. We plan to allow VoIP service through our network to any provider. We also plan to provide a VoIP solution as a competitive offering in late 2008. We will allow the consumer to choose another VoIP provider or to choose our offering once available. We will not restrict customers from accessing any website or running any applications, although of course we will monitor total usage and reserve the right to charge a premium or take action against abusive subscribers. This is critical in a wireless network, since one subscriber abusing the network can adversely affect many other subscribers.

Stelera's experience in actually deploying a new broadband service gives us a valuable perspective on how the government can best promote wireless innovation. Our conclusion is simple and straightforward: Congress and the FCC should continue to rely on market forces instead of prescriptive regulation to determine how new wireless services are deployed. Though Stelera is a relatively small enterprise, we were able to execute on our business strategy and are responding to marketplace demands to provide new wireless broadband service in many areas that currently lack such service. No amount of prescriptive regulation can work better than market forces at identifying marketplace needs and facilitating the flow of investment capital to meet those needs.

The ability to invest with confidence promotes a competitive marketplace that gives consumers a wide choice of wireless services and providers. This competition and choice protects consumers far better than prescriptive regulations that are subject to interpretation, misinterpretation, and manipulation. In particular, I would respectfully urge you to reject calls to inject the government into the wireless marketplace through wholesale-only mandates, "open access" requirements, and geographic buildout requirements. These command-and-control regulatory proposals will undermine innovation and competition, harming rather than promoting the interests of consumers.

There is no assurance, for instance, that a wholesale-only business model could succeed. But setting that aside, government should, as a general matter, refrain from dictating licensees' business plans. If the wholesale model has merit, surely some entrepreneur will step forward and put it into effect.

"Open access" proposals likewise represent unwarranted interference in the deployment of wireless networks. As a threshold matter, the proposals fail to acknowledge that an open

access obligation is simply unnecessary in the competitive wireless marketplace. Indeed, wireless carriers are free to experiment with open access models under today's flexible service rules. As a mandate, however, whether we are talking about Frontline's or Skype's version of this ill-conceived policy, "open access" would be a disaster. Far from opening anything, it will in fact close down investment and innovation in new network infrastructure and innovative services. Imposing such requirements on wireless providers threatens their ability to configure their own networks to best respond to consumer demand and marketplace changes. Open access regimes would expose wireless networks to the prospect of harmful interference and degraded performance, prevent carrier compliance with important social policy obligations such as E-911, and enhance the risk of network security threats.

Finally, a geographic buildout requirement may have some superficial appeal as a means of bringing wireless service to rural areas, but it will in fact have the opposite effect. A build-out requirement based on geography rather than population could prevent a licensee from focusing resources on places where demand and need are greatest, leading to lower quality service as the licensee is forced to spread those resources across a broader area. Being forced to build to meet arbitrary deadlines might also force carriers to make decisions to purchase equipment based on what is available now, rather than on the basis of what might be available in the near future. And forcing a carrier to return spectrum that it has every intention of using in the future will harm the carrier without helping consumers. As Commissioner Copps has observed, "[W]e also need to make sure that we do not unfairly punish licensees -- especially in rural areas -- who cannot engage in aggressive build-out for perfectly good economic reasons."

The successful policy of relying on market forces rather than government involvement has its roots in this Committee's determination, enacted by Congress in 1993, to establish a

national deregulatory framework for wireless services. This market-driven approach wisely abandoned the presumption that wireless providers must be regulated as if they were monopoly utilities, a wise policy choice that has only been confirmed with the passage of time. Moreover, you concluded, correctly, that a *national* policy was most appropriate for mobile services that “by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.”^{1/}

Wireless consumers today have a choice among numerous national, regional, and local carriers offering a broad range of rates and plans to suit every need and budget. Freed from state rate and entry regulation, wireless providers can structure their products and plans without regard to state boundaries. The result has been aggressive competition on price, features, and customer service. One need only leaf through a major newspaper and see the numerous competing wireless advertisements to confirm that competition is the hallmark of the wireless industry. And the fact that there is a single uniform policy for the nation means that consumers enjoy choice, convenience, and competition throughout the country.

Notwithstanding the obvious benefits of Congress’s national deregulatory framework for wireless, it does not extend to all of the terms and conditions of wireless offerings. Seeking to exploit this gap, some states have proposed wireless-specific rules and regulations that could put at risk the national framework that has fostered today vibrant wireless marketplace. Many of these proposals would micromanage the wireless business, dictating the appearance and content of consumers’ wireless bills down to the level of prescribing the size of the type in newspaper advertisements, for instance, steeply increase carrier overhead—and as a result, the rates charged

^{1/} H. REP. NO. 103-111, at 260 (1993).

to customers—by negating the efficiencies of a nationwide carrier’s unified billing and collections efforts.

While the state regulators and legislators behind these proposals assert that consumers need new government mandates, the facts show otherwise. Even with the explosive growth in wireless, consumer complaints as reported by the FCC in its most recent quarterly survey represent less than two-thousandths of one percent – 0.00197 percent (20 per million subscribers) -- out of a customer base of 233 million wireless users, and the number of complaints has been declining on year-to-year basis.

Consumer satisfaction with wireless is due in no small part to carriers’ implementation of the CTIA Consumer Code (“CTIA Code”), which was developed by the industry to provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers’ needs. The Code’s comprehensive provisions require carriers to supply accurate descriptions of charges on bills and the separate service charges from taxes and fees remitted to the government. Signatories to the Code must give customers a penalty-free cancellation period, and disclose at the point of sale all material rates, terms, and conditions, including the amount or range of any fees or surcharges that are collected and retained by the carrier.

My point is this: today’s wireless industry affords consumers the ultimate “consumer protection” of competition and choice. There is simply no need for a new layer of rules and regulations, particularly not mandates that vary from state to state and region to region. Congress should act now to ensure that the benefits of the uniform deregulatory wireless framework originated by this Committee 14 years ago are not compromised by aggressive and

unnneeded state regulation. While the FCC has already declared wireless broadband services to be an interstate information service, clarity on this point will establish a common framework for all wireless services and help us avoid disputes going forward.

Thank you again for inviting me today. I would be happy to answer any questions.